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systems. Additionally, payment rates can be set prior to the beginning of the facility's rate year so that providers will know with certainty what their payment rates will be prior to incurring expenditures. Facilities are not required to change their fiscal year in order to conform to the common reporting year; however, some facilities may want to do so in order to simplify their record keeping.

A provider or provider group which operates 48 or more licensed beds must submit a certified audit. In operations of 48 or more licensed beds, cost reporting becomes complex enough so that a certified audit is necessary to assure proper accounting of public funds. Many operations already have or are required to have certified audits. The costs of these audits are allowable costs for rate setting purposes.

**Part 9553.0041 Subparts 2 and 3. Required Information and Supplemental Reports.**

**Statement of Need:**

Subparts 2 and 3 itemizes those documents and supporting information which are necessary to a cost report. It is necessary to itemize these documents so that providers know what financial information is required to be submitted to the Department for rate setting purposes. Subpart 3 indicates supplemental reports which the provider may be required to submit to substantiate the payment rate.

**Reasonableness:**

These requirements reflect generally accepted accounting principles and auditing standards. These requirements are also similar to those required by Minnesota Statutes, sections 256B.48, and 256B.30 for reimbursement of nursing homes. Additionally, Minnesota Statutes, section 256B.27 authorizes the commissioner to require "any reports, information, and audits of medical vendors which he deems necessary in the efficient administration of the Medical Assistance Program and incidental to the approval of rates and charges for the program." Subpart 3 contains a requirement to provide the Department access to federal and state income tax returns. The Department will not ask the Internal Revenue Service or the Minnesota Commissioner of Revenue for the tax returns but only seeks access to the tax return from the provider. The Department does not want a copy to put in its files. There may be cases in which an income tax return is needed in order to identify all sources of income of owners of the ICF/MR home as a means of verifying the employment and other forms or sources of compensation of an individual who has a ownership interest in the facility. The provision is consistent with certain situations in which persons requesting public funds or grants of money must provide access to income tax returns as part of the application to obtain the money. This requirement is not new: persons requesting public money have been required to provide access to income tax returns such as the stipulation in Minnesota Rules, parts 9510.0590, subpart 3, the previous ICF/MR Reimbursement Rule.

**Part 9553.0041 Subpart 4. Methods of Accounting.**

**Statement of Need:**

Subpart 4 recognizes that a problem would exist if all participating vendors could select their own individualized methods of accounting, resulting in administrative chaos. In order to attain the uniformity

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required by federal regulations, it is necessary to specify the method of accounting to be used.

Reasonableness:

It is reasonable to require that the accrual method is to be used and that generally accepted accounting principles should guide the reporting of costs. This is consistent with other Department reimbursement rules and with the prior ICF/MR reimbursement rule. An exception is allowed for those facilities operated by local governmental units if they have adopted methods other than the accrual method and if they demonstrate that another method more accurately reflects the actual financial operation.

Part 9553.0041 Subpart 5. Records.

Statement of Need:

Subpart 5 is necessary to provide for a sufficient time span so that records are available for field audits on a four-year schedule. The on-site examination of financial records is necessary in order to verify the costs the providers have claimed for reimbursement.

Reasonableness:

The Department is reasonably setting this limit to four years plus the current working year because due to the number of ICFs/MR, the department cannot field audit all ICFs/MR within one year. Workload requirements dictate that the Department use a four-year cycle to complete the audit of all ICFs/MR. This accounts for the record retention requirement of four years plus the current working year.

Part 9553.0041 Subpart 6. Conflicts.

Statement of Need:

This subpart is necessary because although the rule requirements generally adhere to generally accepted accounting principles there are some cases in which GAAP is inappropriate for a rate-setting mechanism and it is necessary to clarify that any conflict which may result because of this is to be resolved in favor of the rule. Also, GAAP changes periodically and the Department would not want the rule provisions to change automatically but would rather review the changes in GAAP to determine if they are appropriate for the rate-setting process. Also, often there is more than one way to meet the requirement of GAAP. However, to fairly and consistently run a reimbursement system it is necessary to specify which method is to be used.

Reasonableness:

In response to some concerns regarding this provision during the promulgation of 12 MCAR §§ 2.05301 to 2.05315 [Temporary], the Department contracted with the accounting firm of Arthur Andersen and Company to review the proposed rule. (See Exhibit E.) The following is excerpted from a letter from Arthur Andersen and Company addressing this point:

"The legislation which resulted in Rule 53 required the commissioner to include requirements in Rule 53 to ensure that the accounting practices of the providers conformed to generally accepted accounting principles

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(GAAP). Some apparently interpret this provision to mean that the entire rate-setting mechanism (accounting, reporting, and rules) should comply with GAAP.

The overall intent behind GAAP is to provide a framework for preparing general purpose financial statements that purport to fairly present financial position and results of operations. The purpose and intent of Rule 53 however, is to establish procedures for determining welfare payment rates for residential facilities for the mentally retarded. Thus, the purpose and intent of GAAP and Rule 53 are not necessarily the same, thus, different reporting/classification standards might be necessary. We believe that the legislative wording concerning GAAP was intended to provide that GAAP should be the base on which Rule 53 is built. Thus, the providers should follow GAAP in maintaining their accounting records in order to ensure that information provided the Department by the providers conforms to GAAP. This ensures that each provider recognizes revenues and expenses in a consistent manner and provides the Department with consistently-prepared financial information from each provider for decision-making purposes.

To require that Rule 53 be structured totally in accordance with GAAP with no provision for override of GAAP would be unusual in rate-setting rule. The purposes of rate-setting rules and GAAP are not always consistent and rate-setting rules would not normally be expected to conform in all respects with generally accepted accounting principles."

Commenting on the same point regarding the nursing home reimbursement rule, Judge Lunde states: "Since the purpose and intent of generally accepted accounting principles may not be consistent with the department's objectives in setting nursing home rates, the department's rules may require deviation from generally accepted accounting principles in order to further the statutory objectives and policy decisions contained in the rules." (Lunde Report, 1985: p. 50.)

Also the Financial Accounting Standard Board 43 (FASB 43) states in paragraph 3 as follows: "3. The Addendum to APB Opinion No. 2. Accounting for the 'Investment Credit' states that '...differences may arise in the application of generally accepted accounting principles as between regulated and non regulated businesses; because of the effect in regulated businesses of the rate-making process...' and discusses the application of generally accepted accounting principles to regulated industries. Accordingly, the provision of the Addendum govern the application of this Statement to those operations of an employer that are regulated for rate-making purposes on an individual-company-cost-of-service basis." Accounting Principles Board Opinion No. 2 (APB 2) is consistent with the view expressed in FASB43.

#### Part 9553.0041 Subpart 7. Certification of Reports.

##### Statement of Need and Reasonableness:

Subpart 7 is required to affix responsibility for the accuracy and truthfulness of reports submitted. It is reasonable to require that financial documents which are the basis for large amounts of reimbursement from public funds contain a signed statement attesting to the accuracy of the information presented.

**LIST OF EXHIBITS**

Exhibit AA	Compensation of Owners Medicare Provider Reimbursement Manual HCFA Pub. 15-1
Exhibit BB	State of Financial Accounting Standards No. 43 (FASB 43) Accounting for Compensated Absences
Exhibit CC	The Hay Guide Chart-Profile Method of Job Evaluation
Exhibit DD	Rule 53 Advisory Committee Minutes
Exhibit EE	Departmental Bulletin Long Term Care Facilities No. 14

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Comment 1. Part 9553.0020, subparts 16 and 20. Mary Martin, representing the Association of Residents for the Retarded in Minnesota (ARRM) suggested that the definitions of "desk audit" and "field audit" in the proposed rule should be similar to the Medicare definitions of those terms. The Department believes the proposed rule is reasonable and that a change to the Medicare definitions is inappropriate. The Medicare system of reimbursement is a retrospective system, i.e., the desk audit rate established is an interim rate which is settled at the end of the year through a field audit. Conversely, the system proposed by these rules is a prospective system in which a final desk audit rate is established prior to the beginning of the rate year. Field audits occur three or four years later. Therefore, the scope of desk and field audits under the proposed rules needs to be different than the scope under the Medicare Program in order to minimize overpayments since those overpayments will not be identified and recovered annually. The Department wishes to retain these definitions as published.

Ms. Martin also commented on the amount of time required for desk audits and the backlog that exists. The Department agrees with Ms. Martin that administrative measures must be taken to improve the timeliness in rate setting. However, that timeliness cannot be bought by sacrificing accuracy in the determination of rates. The Department believes that the problem should be addressed through making maximum use of automated rate setting systems and establishing effective training for auditors and providers. There is a definite learning curve that occurs as providers and auditors become familiar with a new reimbursement rule. For example, the figure of 48 desk audit hours quoted by Ms. Martin several times has been reduced to 35 hours including supervisory review time. It is reasonable to expect that that figure can be greatly reduced in the future.

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Comment 2. Part 9553.0020, subparts 21 and 31. Ms. Martin recommended the moving of worker's compensation insurance cost from fringe benefits to payroll taxes. For purposes of reimbursement, the proposed rule treats fringe benefits and payroll taxes as a single cost category. Therefore, the definition change suggested by Ms. Martin does not affect the calculation of rates. The definitions in the proposed rule are consistent with the definitions used in the nursing home reimbursement rule. Since some facilities are reimbursed both as nursing homes and ICF's/NR and some providers own both types of facilities, it is reasonable to use consistent definitions and the Department wishes to retain both provisions as published.

Comment 3. Part 9553.0020, subpart 39. Mr. James Seifert, a certified public accountant, who does work for a number of ICF/NR providers, and Ms. Martin addressed the definition of related organizations. Mr. Seifert suggested that the word "possession" in item D be changed to "exercise". The Department believes that such a change would radically change the meaning of the definition and rather than make the definition easier to administer, it would complicate the application since a related organization could claim that the control was not being exercised. Additionally, Mr. Seifert suggested two new definitions: "cost" and "reasonableness". The Department believes that all of the provisions of the proposed rule, as a whole, are geared to determining the meaning of those terms for reimbursement purposes. Therefore, the Department wishes to retain this subpart as published and does not wish to add definitions for the words "cost" and "reasonableness".

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Ms. Martin suggested that a percentage test be used to establish whether or not control exists. The definition in this subpart is similar to the Medicare definition found in 42 CFR, section 405.427 and the federal securities law definition found in 17 CFR, section 250.405. All of these definitions look at actual control since it is possible to control an organization even though the ownership is less than 50 percent. It is reasonable to allow sufficient flexibility in the definition in order to evaluate accurately who actually is in control of the organization. Therefore, the Department wishes to retain this provision as published.

Comment 4. Part 9553.0020, subpart 45. Mr. Bjork, Hay Management, Inc., representing ARRH and Mr. Mark Larson, from the law firm of Messereli and Kraemer, representing REM, Inc. addressed concerns regarding the clarity of the definition of top management personnel. Mr. Bjork and Mr. Larson point out that titles are unimportant in the definition but that rather the test should be whether or not the person performs executive functions. The definition, as proposed, already includes that test. Mr. Bjork suggested that the definition specifically state that persons who do not receive compensation from the facility are not included. The Department believes that the addition would be inaccurate. For example, an owner who does not receive any compensation from the facility continues to be top management if he/she performs executive functions; however, that owner does not have to worry about the limits or other provisions affecting top management compensation.

Mr. Larson also expressed concern regarding the classification of program directors. Mr. Larson's concern arises from the fact that many program directors in chain organizations have more than nominal top management

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responsibilities. The Department has proposed an amendment under Comment 6 that would allow allocation of the program director's or any other employee's compensation under certain circumstances. Therefore, the Department believes that the definition, as published, is reasonable and necessary and wishes to retain it.

Comment 5. Part 9553.0030, subpart 1, item B. Mr. James Moran, representing REN, Inc. requested clarification of this provision. To clarify subpart 1, item B, it is also necessary to look at subpart 1, item A which immediately precedes it. Subpart 1, item A defines classification of costs by direct identification and specifies that costs shall be classified in accordance with the cost categories defined in part 9553.0040. All cost categories have a line item called supplies. The supplies associated with a specific cost category must be reported under the supply line item under that cost category. However, there are generic supplies such as paper and supplies used by a copy machine which are used by many departments. The cost of these generic supplies must be reported in the supply line item in the administrative cost category without allocation. The provision is reasonable to enable the department auditors to assess the allocation or classification of costs without requiring the facility to undertake the burdensome task of keeping records to show the prorated costs of generic items used by many departments. The Department desires to retain the proposed provision as published.

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Comment 6. Part 9553.0030, subpart 1, item C. Several providers raised questions regarding the allocation of salaries of top management personnel to other cost categories. The Department agrees that it is necessary and reasonable to allow the allocation of salaries to other cost categories to insure the efficient use of personnel at the facility level. For example, a provider group with more than 48 beds may employ a person to work in three of its facilities with the following responsibilities:

	<u>Duty_1</u>	<u>% Time</u>	<u>Duty_2</u>	<u>% Time</u>
Facility A	Program Director	25%	Administrator	25%
Facility B	Program Director	25%		
Facility C	Program Director	25%		

The allocation of this person's time should be allowed provided that the person is not performing any other service for the central office. If the Department were to allow the allocation of top management salaries for persons performing general executive functions at the central office in a provider group of more than 48 beds, the top management limitation provisions of this proposed rule could be easily circumvented. The circumvention would increase the cost to the state without benefit and perhaps disservice to the residents since the residents will not have the benefit of the full attention of the person.

Therefore, the Department proposes the following amendment: In line 1, page 9, strike "For a facility or provider group of 48 or fewer beds" and, insert the phrase "Except as provided in item D". In line 11, page 9, strike the sentence beginning "Except as provided..." and insert the following

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new paragraph: "D. The salary of a person who is classified as top management personnel and who performs any service for the central, affiliated, or corporate office must be allocated to the facility's administrative cost category in accordance with subpart 4, item C if the facility or provider group served by the central, affiliated, or corporate office has more than 48 licensed beds."

Comment 7. Part 9553.0030, subpart 4, items A and B. Mr. Horan proposes to expand items A and B to permit the allocation of costs other than the salaries, fringe benefits, and payroll taxes of the consultants who work out of the central office. He specifically mentioned in-service training. The proposed rule allows the allocation of the salary, fringe benefits and payroll taxes of the person doing the in-service training for an individual facility. If the facility had hired a person to do the in-service training, any travel done by the person not connected with the person's own training, and supplies such as paper would be classified in the administrative cost of the facility. Therefore, allowing the allocation of costs other than salaries, fringe benefits and payroll taxes would give chain organizations an undue advantage over free standing facilities. The department wishes to retain the proposed provision as published.

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